

REMARKS

By this amendment, Applicant has amended claims 2-4, 6, 10-11, 16, 22, 29, and 34-38. Claims 1, 17-21, 24-28, 36-37, and 41-46 have been canceled. Claims 2-16, 22-23, 29-35, and 38-40 remain for consideration in the application.

Election/Restriction

Applicant affirms the election of claims 1-40 for prosecution. Applicant cancels claims 41-46 without prejudice and reserves the right to file these claims in a divisional application at a later date.

In the Information Disclosure Statement

Applicant has resubmitted the cited foreign patent literature and non-patent literature, previously cited January 16, 2004.

In the Specification

The specification was objected to as failing to provide proper antecedent basis for the claimed subject matter, specifically with respect to the external control of each sub-module. Applicant submits that the claiming of priority and incorporation by reference of previous applications, as well as disclosure of the current specification, results in all disclosure of the claimed subject matter being present in the present specification. Application serial number 09/361,829 contains clear support for the objected to claim elements. As such, Applicant has amended the specification to bring that previously incorporated subject matter into the present specification.

Specifically, support for the external control of each sub-module is found at page 7, lines 20-30 and in the description of Figure 3 for application serial number 09/361,829. Essential portions of that text have been added to the present specification. Also, referring to Figure 1 of the present specification, it is clear that a centrifuge is separate from the apparatus 100, and that

the centrifuge is an external component. The control operation of the program of the application serial number 09/361,829 clearly indicates that control of the modules and processes is externally performed.

Claim Rejections Under 35 U.S.C. § 112

Claims 3-6, 11, 15-21, and 35-38 were rejected under 35 U.S.C. §112, second paragraph. Applicant has amended claims 3, 4, 11, 35, and 38 in accordance with the comments of the Office Action.

“The biological sample” in claim 3 has been clarified. “The remaining material” in claim 3 has been clarified. The Office Action questions where samples are located in claim 3. The samples are in a vessel, as is clearly stated in line 3 of claim 3. “The vessel” has been clarified in claim 4. The possibility of using additional dispensing steps with other reagents are well known in the art, and need not be specifically stated. In any event, support for such steps appears at page 6, lines 4-5 of the specification of application serial number 09/361,829. “A sample” has been clarified for claims 6, 11, 34-35, and 38. As to claim 15, the Office Action questions whether the sample is in a container. Claim 14 clearly recites that the sample is “in a first vessel.” “A vessel” has been clarified in claim 16.

All rejections under 35 U.S.C. §112 are believed addressed by the amendments and the remarks.

Claim Rejections Under 35 U.S.C. § 103

Claims 1-2, 6, 10-13, 17-25, 29-32 and 36-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Petschek et al. (U.S. Patent No. 5,389,339) in view of Lange (U.S. Patent No. 6,232,464). Applicant traverses. Claims 1, 17-21, 24-28, and 36-37 have been canceled. Claims 2, 6, 10-11, 22, 29, and 38 have been amended.

Claims 1, 22, 29, and 38 have been amended to include a recitation that each sub-module except the centrifugation sub-module is configured to control operation external to a centrifuge. This is clearly different from Petschek et al. which performs its process steps within the centrifuge. See Petschek et al., including claims 1 and 43, and the specification at many places where all functions of the processes of Petschek et al. are performed within the rotor. Pipette tips

are used to dispense reagents into the tubes contained in the rotor, and all functions of the operation of Petschek et al. are contained within the rotor. For example only, and not by way of limitation, Petschek et al. includes the following:

1. Figure 1B shows an assembly with no arms or robot-type motion mechanics;
2. Col. 5, ll. 15-20 describe figure 1B (bottles on one side of the cabinet and feed to samples in the rotor);
3. Col. 2, ll. 38-41 (dispensing is affixed to rotor);
4. Col. 3 ll. 3-5 (mixing performed by agitating rotor);
5. Col. 3 ll. 22-25 (delivery conduit leads to centrifuge);
6. Col. 5 ll. 4-5 (“addition of one or more reagents to the sample tubes in rotor”);
7. Col. 5 ll. 30-31 (position of the pipette in relation to the rotor);
8. Col. 5 l. 65 - col. 6 l. 5 (describes the arrangement of the rotor to the rack, to maintain the pipette tip-to-sample relationship when the centrifuge is indexed); and
9. Col. 10 describes the protocol commands of Figs. 4 and 5, and at ll. 54-55 recites “command steps are performed for each cell sample tube in the centrifuge rotor.”

Petschek does not show each and every element of the claims. Lange is cited only for controlling temperature, and does not address the lack of elements of Petschek that are present in the claims as amended. Therefore, no combination of Petschek and Lange contains each and every element of the claims, and claims 1, 22, 29, and 38 are allowable. The remaining claims depend from or further define one of patentably distinct claims 1, 22, 29, or 38, or claims 3 or 34 which are also believed allowable, and are therefore also believed allowable.

Claims 6-7, 10, 24-26, 29 and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Petschek et al. in view of Lange and further in view of Johnson et al. (U.S. Patent No. 5,584,039). Claims 24-26 have been canceled. Claim 29 has been amended as described above, and Johnson does not add the missing elements. Therefore, no combination of Petschek, Lange, and Johnson discloses each and every element of claim 29, which is allowable. The remaining claims depend from or further define one of patentably distinct claims 1, 22, 29, or 38, or claims 3 or 34 which are also believed allowable, and are therefore also believed allowable.

Claims 6, 8, 24-25 and 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Petschek et al. in view of Lange and further in view of Poulter et al. (U.S. Patent No. 6,072,795). Claims 24-25 and 27 have been canceled. The remaining claims depend from or further define one of patentably distinct claims 1, 22, 29, or 38, or claims 3 or 34 which are also believed allowable, and are therefore also believed allowable.

Claims 6, 9, 24-25 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Petschek et al. in view of Lange and further in view of McNutt (U.S. Patent No. 5,802,389). Claims 24-25 and 28 have been canceled. The remaining claims depend from or further define one of patentably distinct claims 1, 22, 29, or 38, or claims 3 or 34 which are also believed allowable, and are therefore also believed allowable.

Allowable Subject Matter

Claims 3-5 and 14-16 were indicated as allowable if rewritten to overcome the rejection under 35 U.S.C. 112, 2nd paragraph. Claim 3 has been so amended. Claims 4-5 depend from allowable claim 3. Claim 14 has been amended to depend from allowable claim 34. Claims 15-16 depend from allowable claim 14.

Claims 34-35 were indicated as allowable if rewritten to overcome the rejection under 35 U.S.C. 112, 2nd paragraph. Claim 34 has been so amended. Claim 35 depends from allowable claim 34.


CONCLUSION

In view of the above remarks, Applicant believes that all pending claims are in condition for allowance and respectfully requests a Notice of Allowance be issued in this case. Please charge any further fees deemed necessary or credit any overpayment to Deposit Account No. 501373.

If the Examiner has any questions or concerns regarding this application, please contact the undersigned at (612) 312-2203.

Respectfully submitted,

Date: _____

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